HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
and
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

W.A. NO.882 OF 2006

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Between:
Bodda Krishna Rao

..... Appellant

AND

The State of A.P.Rep. by its Joint Collector,
Srikakulam, Srikakulam District
And two others.

.....Respondents

::JUDGMENT::

Counsel for the Appellant : Sri G.Vasantha Rayadu

Counsel for Respondents : The Government Pleader

for Civil Supplies.

Dated 23.08.2006

Per Sri G.S.Singhvi, CJ

This is an appeal for setting aside order dated 16.6.2006 vide which the learned Single Judge refused to interfere with order dated 7.6.2006 passed by Joint Collector, Srikakulam (for short 'the Joint Collector') declining stay of order dated 26.5.2006 passed by Revenue Divisional Officer, Tekkali in the matter of cancellation of authorization of the fair price shop dealership of the appellant.

The appellant was appointed as fair price shop dealer for Village Pentavooru, Nandigam Mandal, Srikakulam District. On receipt of complaints from the card-holders that the appellant was selling essential commodities at higher price; that he had given 27 death and migrated cards and withdrawn essential commodities for his personal gain and that he had exchanged the PDS Rice with poor quality rice from his brother's rice mill, Revenue Divisional Officer, Tekkali (respondent No.2) issued show cause notice dated 23.11.2005 to the appellant proposing to take action against him for cancellation of the authorization of fair price shop dealership. After five days, respondent No.2 suspended the appellant's authorization. The appeal preferred by the appellant against the order of suspension was entertained by the Joint Collector, but he declined the prayer for interim relief. The appellant then filed W.P.No.28192 of 2005, which was allowed by the learned Single Judge on 4.1.2006 with a direction to the appellate authority to finally dispose of the appeal. Simultaneously, the learned Single Judge directed that the writ petitioner (appellant herein) shall be permitted to distribute the essential commodities.

Thereafter, respondent No.2 passed order dated 26.5.2006 whereby he cancelled the appellant's authorization as fair price shop dealer. The appellant challenged that order by filing an appeal before the Joint Collector. He also applied

for stay of order dated 26.5.2006. The Joint Collector entertained the appeal preferred by the appellant but declined his prayer for stay by recording the following order.

> "This is a stay petition filed by Sri Bodda Krishna Rao, Pentavooru(v), Nandigam Mandal under Cl.20(3) of APSPDS Control Order 2001, against the cancellation orders passed in progs.Rc.No.2351/2005 A dt.26.5.2006 by the Revenue Divisional Officer, Tekkali.
>
> The main grounds mentioned in stay petition that the orders of the respondent passed against the appellant are contrary to law, weight of evidence and probabilities of the case.
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> The records available in the office have been verified. As seen from the records, it is found that during the period of enquiry by the enforcement staff, it was revealed that the petitioner is selling E.Cs at higher rates with less weighment and also insulting the consumers who questioned about his irregularities and threatening them by using un-parliamentary language. It was also reported by the Manal Revenue Officer, Nandigam that the petitioner has misutilised I.S.L rice of 396.00 qtls. The irregularities committed by the appellant are grave in nature. In the circumstances, it is not desirable to keep the petitioner as F.P. shop dealer till the appeal is disposed.
>
> Therefore, the request for grant of stay is rejected."

The learned Single Judge before whom the writ petition filed by the appellant questioning the refusal of the Joint Collector to stay the order dated 26.5.2006 was placed, opined that the discretion exercised by the appellate authority not to entertain the appellant's prayer for stay does not suffer from any patent legal infirmity warranting interference under Article 226 of the Constitution of India.

We have heard Sri P.Satyanarayana, Advocate for the appellant at sufficient length and perused the record. It is well settled that in exercise of power under Article 226 of the Constitution of India, the High Court will not interfere with the discretion exercised by the subordinate judicial authorities and quasi judicial authorities in the matter of grant of interim relief unless it is shown that the order passed by the subordinate court or quasi judicial authority suffers from jurisdictional

error or patent illegality. Mere possibility of the High Court forming a different opinion on the petitioner's prayer for interim relief does not justify court's interference with the order passed by the subordinate court or quasi judicial authority.

In the case before us, we find that the Joint Collector had assigned tangible reasons for refusing to entertain the appellant's prayer for stay. Therefore, the learned Single Judge rightly declined to interfere with order dated 7.6.2006 passed by the Joint Collector.

Whether the allegations found proved against the appellant by respondent No.2 will be sustained by the appellate authority is a question on which we do not want to express any opinion at this stage because the same is likely to prejudice the cause of either of the parties. However, we have no hesitation to observe that the allegation of misutilisation of 396 quintals of rice found proved against the appellant is extremely serious and the same could be legitimately taken into consideration by the appellate authority while assessing the factors like balance of convenience and irreparable injury. We are further of the view that it would not be in public interest to allow a person who is found guilty of such grave irregularities to continue to operate as fair price shop dealer on the strength of an interim order passed by the Court.

For the reasons mentioned above, the appeal is dismissed.

As a sequel to the dismissal of the appeal, WAMP No.1827 of 2006 filed for interim relief is also dismissed.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY,J

Dt.23.8.06
msv